

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

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Subpart A—Background

§ 1101.1 General background.

(a) *Basic purpose.* This rule sets forth the Consumer Product Safety Commission’s policy and procedure under sections 6(b)(1)–(5) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2055(b)(1)–(5)) which relate to public disclosure of information from which the identity of a manufacturer or private labeler of a product can be readily ascertained. In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely on the safety of a consumer product or class of products or on the practices of any manufacturer, private labeler, distributor or retailer of consumer products as required by section 6(b)(7) of the CPSA (15 U.S.C. 2055(b)(7)).

(b) *Statutory requirements.* Section 6(b) establishes procedures that the Commission must follow when it releases certain firm specific information

to the public and when it retracts certain information it has released.

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the public can readily ascertain the identity of the firm from the information. Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission. Disclosure of information may not occur in fewer than 30 days after notice to the manufacturer or private labeler unless the Commission finds the public health and safety requires a lesser period of notice. Exceptions to these requirements are established in section 6(b)(4). Additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5).

(2) Section 6(b)(2) requires the Commission to provide further notice to manufacturers or private labelers where the Commission proposes to disclose product-specific information the firms have claimed to be inaccurate.

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified.

(c) *Internal clearance procedures.* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific. This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system. (Directive 1450.2 "Clearance Procedures for Commission Staff to Use in Providing Information to the Public." April 27, 1983.

§ 1101.2 Scope.

Section 6(b) and these rules apply to information concerning products sub-

ject to the CPSA (15 U.S.C. 2051-2085), and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191-1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261-1276 (FHSA); and the Refrigerator Safety Act, 15 U.S.C. 1211-1214 (RSA). See section 6(b)(1) of the CPSA, 15 U.S.C. 2055(d)(1).

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

§ 1101.11 General application of provisions of section 6(b)(1).

(a) *Information subject to section 6(b)(1).* To be subject to the notice and analysis provisions of section 6(b)(1), information must meet all the following criteria:

(1) The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.

(2) The information must be obtained, generated or received by the Commission as an entity or by individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities.

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see § 1101.12).

(4) The manner in which the product is designated or described in the information must permit the public to ascertain readily the identity of the manufacturer or private labeler. [See § 1101.13.]

(b) *Information not subject to section 6(b)(1).* The requirements of section 6(b)(1) do not apply to:

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (see subpart E of this rule).

(2) Information the Commission is required by law to make publicly available. This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U.S.C.

2068(b); section 14(d) of the FHSA, 15 U.S.C. 1273(d); and section 15(c) of the FFA, 15 U.S.C. 1202(c). (See the Commission's Export Policy Statement, 16 CFR part 1017.)

(3) Information required to be disclosed to the President and Congress pursuant to section 27(j) of the CPSA, 15 U.S.C. 2076(j).

(4) Press releases issued by firms.

(5) Information filed or presented in administrative proceedings or litigation to which the Commission is a party and which is not expressly subject to the section 6(b)(4) exceptions.

§ 1101.12 Commission must disclose information to the public.

Public. For the purposes of section 6(b)(1), the public includes any person except:

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity.

(b) State officials who are commissioned officers under section 29(a)(2) of the CPSA, 15 U.S.C. 2078(a)(2), to the extent that the Commission furnishes them information necessary for them to perform their duties under that section. Such officials may not release to the public copies of such information unless the Commission has complied with section 6(b) or the information falls within an exception to section 6(b).

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA (15 U.S.C. 2077). However, disclosures of information by such a Panel are subject to section 6(b).

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives.

(e) The persons or firms who provided the information to the Commission, or their legal representatives.

(f) Other Federal agencies or state or local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA (15 U.S.C. 2078(e)). However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by an officer, employee or agent of the Commission

unless CPSC has complied with the applicable requirements of section 6(b).

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested.

§ 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product. The Commission will provide the advance notice and opportunity to comment if there is a question whether the public could readily ascertain the identity of a manufacturer or private labeler.

Subpart C—Procedure for Providing Notice and Opportunity To Comment Under Section 6(b)(1)

§ 1101.21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). However, when the Commission makes a public health and safety finding pursuant to section 6(b)(1) of the CPSA, the Commission may determine that it is necessary to provide the notice and opportunity to comment orally, either in person or by telephone.

(b) *Content of notice.* The Commission will provide the manufacturer or private labeler with:

(1) Either the actual text of the information to be disclosed or, if appropriate, a summary of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press

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release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration.

(4) A statement that, in the absence of a specific request by a firm that its comments be withheld from disclosure, the Commission will release to the public the firm's comments (or a summary thereof prepared by the firm or, if the firm declines to do so, by the Commission).

(5) A statement that a request that comments be withheld from disclosure will be honored.

(6) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(3) (see § 1101.24(b)).

(7) A statement that no further request for comment will be sought by the Commission if it intends to disclose the identical information in the same format, unless the firm specifically requests the opportunity to comment on subsequent information disclosures.

(8) The name, address, and telephone number of the person to whom comments should be sent and the time when any comments are due (see § 1101.22).

§ 1101.22 Timing: request for time extensions.

(a) *Time for comment.* (1) Generally firms will receive a minimum of twenty (20) calendar days from the date of the letter in which the Commission transmits the notice to furnish comments to the Commission. Firms that receive requests for comments by mail will receive an additional three (3) days to comment to account for time in the mail.

(2) Upon his or her own initiative or upon request, the Freedom of Information Officer may provide a different amount of time for comment, particularly for firms that receive voluminous or complex material. In addition, the Commission may find that the public health and safety requires a lesser period of notice and may require a re-

sponse in a shorter period of time (see § 1101.24).

(b) *No response submitted.* (1) If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will analyze the information as provided in subpart D. If no comments are submitted the Commission will not give the further notice provided in section 6(b)(2).

(2) Unless the Commission finds that the public health and safety requires a lesser period of notice (see § 1101.23), the Commission will not disclose the information in fewer than 30 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension.* (1) Requests for extension of time to comment on information to be disclosed must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written. An oral request for a time extension must be promptly confirmed in writing.

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time.

§ 1101.23 Providing less than 30 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 30 days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 30-day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment; or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that

the Commission may find that the public health and safety requires a lesser period of notice than the 30 days advance notice that section 6(b)(1) generally requires. The Commission may determine that the public health and safety requires less than 30 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterizes statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 30 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the FEDERAL REGISTER. Disclosure may be made concurrently with the filing of the FEDERAL REGISTER notice and need not await its publication. However, where applicable, before releasing information, the Commission will comply with the requirements of section 6(b) (1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101.25).

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information is intended to permit firms to furnish information and data to the Commission to assist the agency in its evaluation of the accuracy of the information. A firm's submission, therefore, must be specific and should be accompanied by documentation, where available, if the comments are to assist the Commission in its evaluation of the information. Comments of a general nature, such as gen-

eral suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy. The weight accorded a firm's comments on the accuracy of information and the degree of scrutiny which the Commission will exercise in evaluating the information will depend on the specificity and completeness of the firm's comments and of the accompanying documentation. In general, specific comments which are accompanied by documentation will be given more weight than those which are undocumented and general in nature.

(b) *Claims of confidentiality.* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)), which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases its claims. (See Commission's Freedom of Information Act regulation, 16 CFR part 1015, particularly 16 CFR 1015.18.)

(c) *Requests for nondisclosure of comments.* If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments. If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission

shall notify the manufacturer or private labeler that it intends to disclose the information not less than 10 working days after the date of the receipt of notification by the firm. The notice of intent to disclose will include an explanation of the reason for the Commission's decision, copies of any additional materials, such as explanatory statements and letters to Freedom of Information Act requesters, which were not previously sent to the firm.

(b) *Commission finding a lesser period is required.* The Commission may determine that the public health and safety requires less than 10 working days advance notice of its intent to disclose information claimed to be inaccurate. For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterized statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 10 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the FEDERAL REGISTER. Firms will be notified in advance of the date and time, if possible, at which the Commission intends to disclose the information. Disclosure may be concurrently with the filing of the FEDERAL REGISTER notice and need not await its publication. The FEDERAL REGISTER notice prepared under section 6(b)(2) may be submitted simultaneously with or after a FEDERAL REGISTER notice prepared under section 6(b)(1) (see § 1101.23(c)).

§ 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

(a) *Notice to the extent practicable.* Section 6(b)(1) requires that "to the extent practicable" the Commission must pro-

vide manufacturers and private labelers notice and opportunity to comment before disclosing information from which the public can ascertain readily their identity.

(b) *Circumstances when notice and opportunity to comment is not practicable.* The Commission has determined that there are various circumstances when notice and opportunity to comment is *not* practicable. Examples include the following:

(1) When the Commission has taken reasonable steps to assure that the company to which the information pertains is out of business and has no identifiable successor.

(2) When the information is disclosed in testimony in response to an order of the court during litigation to which the Commission is not a party.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts it Administers

§ 1101.31 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision on disclosure so that it can disclose information in accordance with section 6(b) as soon as is reasonably possible after expiration of the statutory thirty day moratorium on disclosure.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests the Commission not to include the comments or to include only a designated portion of the comments and disclosure of the comments on such a designated portion is not necessary to assure that the disclosure of the information which is the subject of the comments is fair in the circumstances.

(c) *Explanatory statements.* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public. Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information. To the extent it is practical the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy or unless the firm, in its comments responding to the Commission's initial section 6(b) notice, specifically requests the opportunity to comment on subsequent disclosures, or unless the Commission determines that sufficient time has passed to warrant seeking section 6(b) comment again. Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

§ 1101.32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public:

(1) The Commission staff or a qualified person or entity outside the Commission (e.g., someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed; or

(2) The Commission staff conducts a technical, scientific, or other evaluation which yields or corroborates the product information to be disclosed or the staff obtains a copy of such an evaluation conducted by a qualified person or entity; or

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that:

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product; or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

(iii) The confirmation is made by an eyewitness to an injury or safety-related incident involving such a product; or

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product. Such persons would include, for example, a fire marshal, a fire investigator, an electrical engineer, an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101.32(a).

(2) As described in subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the

Commission proposes to disclose and will invite comment with respect to that information.

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with § 1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

§ 1101.33 Reasonable steps to assure information release is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. The Commission will also take reasonable steps to disclose any other relevant information in its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in confidence.

(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§ 1101.34 Reasonable steps to assure information release is “reasonably related to effectuating the purposes of the Acts” the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

(1) *Purposes of the CPSA.* The Commission will review information to determine whether disclosure would be reasonably related to effectuating one or more of the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U.S.C. 2051(b) and 2054.

(2) *Purposes of the FHSA, FFA, PPPA and RSA.* The Commission will also review information concerning products subject to the transferred acts it administers and to the Commission’s specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts.

(3) *Purposes of the FOIA.* FOIA requests will be reviewed to determine whether disclosure of the information is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In the event of a close question on this issue, the Commission will defer to the purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission’s possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety.

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, was prepared or is maintained in the course of or to support an activity of the Commission designed to accomplish one or more of the statutory purposes.

Subpart E—Statutory Exceptions of Section 6(b)(4)

§ 1101.41 Generally.

(a) *Scope.* This subpart describes and interprets the exceptions to the requirements of section 6 (b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to (1) information about a product reasonably related to the subject matter of an imminent hazard action in federal court; (2) information about a product which the Commission has reasonable cause to believe violates the prohibited act section of one of the acts the Commission administers and the information is reasonably related to the alleged violations; (3) information in the course of or concerning a rulemaking proceeding; or (4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

(b) *Application to transferred act.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

§ 1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of “information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products).”

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA (15 U.S.C. 2061), in a United States district court. Once the exception applies, information may be disclosed to the public while the proceeding is pending without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous. Upon termination of the proceeding, information filed with the court or otherwise made public is not subject to section 6(b). Information in the Commission’s

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possession which has not been made public is subject to section 6(b).

§ 1101.43 Prohibited acts exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of a “prohibited act” section under any of the statutes administered by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has “reason to believe” there has occurred a violation of sections 19(a) (1), (2), and (5) or (10) of the CPSA which pertains to a consumer product. This exception also applies once the Commission has “reasonable cause to believe” there has occurred a “prohibited act” pertaining to a product regulated under the transferred acts. Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerning the product is reasonably related to the violative practice or condition.

§ 1101.44 Rulemaking proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information “in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking) * * * under this Act.”

(b) *Scope of exception.* This exception applies upon publication in the FEDERAL REGISTER of an advance notice of proposed rulemaking or, if no advance notice of proposed rulemaking is issued, upon publication in the FEDERAL REGISTER of a notice of proposed rulemaking, under any of the acts the Commission administers. Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding which is presented during the proceeding or which is contained or referenced in the public record of the proceeding and or which concerns the proceeding

without following the requirements of section 6(b)(1). Documentation supporting the public record is also excepted from section 6(b). A rulemaking proceeding includes a proceeding either to issue, to amend, or to revoke a rule.

(c) The phrase “in the course of” refers to information disclosed as part of the proceeding and may, therefore, include information generated before the proceeding began and later presented as part of the proceeding. A rulemaking proceeding ends once the Commission has published the final rule or a notice of termination of the rulemaking in the FEDERAL REGISTER.

(d) The phrase “concerning” refers to information about the proceeding itself both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding. By issuing opinions and public statements, the Commissioners, and the presiding official, who act as decisionmakers, may also publicly explain their individual votes and any decision rendered.

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of “information in the course of or concerning * * * [an] adjudicatory proceeding * * * under this Act.”

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FAA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U.S.C. 2064(c) or (d), 2066(a)(1), or (3), or 2069); section 15 of the FHSA (15 U.S.C. 1274); section 5(b) of the FFA, (15 U.S.C. 1194(b)); or section 4(c) of the PPPA (15 U.S.C. 1473(c)). An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51–1025.58.

(c) The phrase “in the course of” refers to information disclosed as part of

the adjudication, whether in documents filed or exchanged during discovery, or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

(d) The phrase “concerning” refers to information about the administrative adjudication itself, both once it begins and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding including, for example, the effectiveness of any corrective action such as information on the number of products corrected as a result of a remedial action. By issuing opinions and public statements, the Commissioners and the presiding official, who act as decisionmakers, may publicly explain their individual votes and any decision rendered.

[48 FR 57430, Dec. 29, 1983, as amended at 49 FR 8428, Mar 7, 1984]

§ 1101.46 Other administrative or judicial proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of “information in the course of or concerning any * * * other administrative or judicial proceeding under this Act.”

(b) *Scope of exception.* This exception applies to an administrative or judicial proceeding, other than a rulemaking or administrative adjudicatory proceeding, under the CPSA, FHSA, FFA, or PPPA. Proceedings within this exception include:

(1) A proceeding to act on a petition to start a rulemaking proceeding. This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins. Information subject to the exception for petition proceedings is the petition itself and the supporting documentation, and information subsequently compiled by the staff and incorporated or referenced in the staff briefing papers for and recommendation to the Commission.

(2) A proceeding to act on a request for exemption from a rule or regulation. This proceeding begins with the

filing of a request for exemption and ends when the request is denied or, if granted, when the Commission takes the first step to implement the exemption, e.g., when an amendment to the rule or regulation is proposed.

(3) A proceeding to issue a subpoena or general or special order. This proceeding begins with a staff request to the Commission to issue a subpoena or general or special order and ends once the request is granted or denied.

(4) A proceeding to act on a motion to quash or to limit a subpoena or general or special order. This proceeding begins with the filing with the Commission of a motion to quash or to limit and ends when the motion is granted or denied.

(5) Any judicial proceeding to which the Commission is a party. This proceeding begins when a complaint is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

(6) Any administrative proceeding to which the Commission is a party, such as an administrative proceeding before the Merit Systems Protection Board or the Federal Labor Relations Authority. This proceeding begins and ends in accordance with the applicable regulations or procedures of the administrative body before which the proceeding is heard.

(7) A proceeding to obtain a retraction from the Commission pursuant to subpart F of these rules. This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) *In the course of or concerning.* The phrase “in the course of or concerning” shall have the same meaning as set forth in either § 1101.44 (c) and (d) or § 1101.45 (c) and (d), whichever is applicable.

Subpart F—Retraction

§ 1101.51 Commission interpretation.

(a) *Statutory provisions.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon

the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(b) *Scope.* Section 6(b)(7) applies to inaccurate or misleading information only if it is *adverse*—i.e., if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer. In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers. Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents, contractors or representatives in their official capacities.

§ 1101.52 Procedure for retraction.

(a) *Initiative.* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or an individual member, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC. Washington, D.C. 20207.

(c) *Content of request.* A request for retraction must include the following information to the extent it is reasonably available:

(i) The information disclosed for which retraction is requested, the date

on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (e.g., letter, memorandum, news release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) A statement of the specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) A statement of the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) A statement of the action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(5) Any additional data or information the firm believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request for retraction within 30 working days unless the Commission determines, for good cause, that a longer time period is appropriate. If the Commission finds that the Commission or any individual member, employee, agent contractor or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's product or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made. If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances.

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of its decision on request for retraction. Notification shall set forth the reasons for the Commission's decision.

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

§ 1101.61 Generally.

(a) *Generally.* In addition to the requirements of section 6(b)(1), section 6(b)(5) of the CPSA imposes further limitations on the disclosure of information submitted to the Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

(b) *Criteria for disclosure.* Under section 6(b)(5) the Commission shall not disclose to the public information which is identified as being submitted pursuant to section 15(b) or which is treated by the Commission staff as being submitted pursuant to section 15(b). Section 6(b)(5) also applies to information voluntarily submitted after a firm's initial report to assist the Commission in its evaluation of the section 15 report. However, the Commission may disclose information submitted pursuant to section 15(b) in accordance with section 6(b)(1)–(3) if:

(1) The Commission has issued a complaint under section 15 (c) or (d) of the CPSA alleging that such product presents a substantial product hazard; or

(2) In lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product; or

(3) The person who submitted the information under section 15(b) agrees to its public disclosure.

§ 1101.62 Statutory exceptions to section 6(b)(5) requirements.

(a) *Scope.* The limitations established by section 6(b)(5) do not apply to the public disclosure of:

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (see § 1101.42);

(2) Information about a consumer product which the Commission has reasonable cause to believe is in violation of a “prohibited act” section under any of the statutes administered by the Commission (see § 1101.43); or

(3) Information in the course of or concerning a judicial proceeding (see § 1101.45).

§ 1101.63 Information submitted pursuant to section 15(b) of the CPSA.

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified by the manufacturer, distributor or retailer, or treated by the Commission staff as being submitted pursuant to section 15(b).

(b) Section 6(b)(5)'s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9) the Commission delegates to the General Counsel or his or her senior staff designees, the authority to render all decisions under this part concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment except as provided in paragraph (b). The Commission also delegates to the Secretary of the Commission, or his or her senior staff designee, authority to make all decisions under this part concerning the release of information under section 6(b) when firms have failed to furnish section 6(b) comment or have consented to disclosure except as provided in paragraph (b) of this section. The General Counsel shall have authority to establish an Information Group composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members.

(b) *Findings not deleted.* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and § 1101.23(b) of this part, that the public health and safety requires less than 30 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and § 1101.25(b) of this part, that the public health and safety requires less

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than ten (10) days advance notice of its intent to disclose information claimed to be inaccurate;

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and § 1101.52 of this part.

(c) *Final agency action; Commission decision.* A decision of the General Counsel or the Secretary or their designees shall be a final agency decision and shall not be appealable as of right to the Commission. However, the General Counsel or the Secretary may in his or her discretion refer an issue to the Commission for decision.

PART 1105—CONTRIBUTIONS TO COSTS OF PARTICIPANTS IN DEVELOPMENT OF CONSUMER PRODUCT SAFETY STANDARDS

Sec.

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- 1105.14 Audit and examination.

AUTHORITY: Sec. 7(c), Pub. L. 97-35, 95 Stat. 704 (15 U.S.C. 2056(c)).

SOURCE: 48 FR 57121, Dec. 28, 1983, unless otherwise noted.

§ 1105.1 Purpose.

The purpose of this part is to describe the factors the Commission considers when determining whether or not to contribute to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant") who participates with the Commission in developing standards. The provisions of this part do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the Commission in developing proposed standards.

§ 1105.2 Factors.

The Commission may agree to contribute to the cost of a participant who participates with the Commission in developing a standard in any case in which the Commission determines:

(a) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(b) That the participant to whom a contribution is made is financially responsible.

§ 1105.3 A more satisfactory standard.

In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider:

(a) The need for representation of one or more particular interests, expertise, or points of view in the development proceeding; and

(b) The extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

§ 1105.4 Eligibility.

In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(a) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(b) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(c) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding;